

Annette W. Jarvis (Utah State Bar No. 01649)
Peggy Hunt (Utah State Bar No. 06060)
Michael F. Thomson (Utah State Bar No. 09707)
Jeffrey M. Armington (Utah State Bar No. 14050)

DORSEY & WHITNEY LLP

136 South Main Street, Suite 1000

Salt Lake City, UT 84101-1685

Telephone: (801) 933-7360

Facsimile: (801) 933-7373

Email: jarvis.annette@dorsey.com

hunt.peggy@dorsey.com

thomson.michael@dorsey.com

armington.jeff@dorsey.com

Attorneys for Debtor Naartjie Custom Kids, Inc.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re:

NAARTJIE CUSTOM KIDS, INC.,

Debtor.

Bankr. Case No. 14-29666

Chapter 11

The Honorable William T. Thurman

**DEBTOR'S SUPPLEMENTAL MOTION FOR AN ORDER AUTHORIZING THE
DEBTOR TO MAKE CERTAIN INTERIM PAYMENTS TO ITS WHOLLY OWNED
SUBSIDIARY, ZA ONE (PTY) LTD. PURSUANT TO 11 U.S.C. §§ 105 AND 363,
AND FED. R. BANKR. P. 6004**

Pursuant to 11 U.S.C. §§ 105(a) and 363, as well as Fed. R. Bankr. P. 6004, Naartjie Custom Kids, Inc. ("Naartjie" or "Debtor"), the debtor in possession in the above-captioned bankruptcy case, by and through its counsel, submits this motion (the "Motion") for entry of an Order authorizing the Debtor to make certain payments to its wholly-owned subsidiary, ZA One (Pty) Ltd. ("ZA One"). In support of the Motion, the Debtor states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

GENERAL BACKGROUND

2. On September 12, 2014, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

3. No trustee or examiner has been appointed in this case. The Official Committee of Unsecured Creditors was formed on September 22, 2014 (the “Committee”). The Debtor is operating its business as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

4. ZA One is a wholly owned South African subsidiary of the Debtor, which operates retail stores selling children’s clothing in South Africa and generates design ideas for the Debtor’s clothing lines in South Africa, the United States and Canada. The Debtor holds all of the outstanding shares in ZA One.

5. On October 30, 2014 the Court entered its *Order Granting Debtor’s Motion for An Order Authorizing the Debtor to Make Certain Interim Payments to its Wholly Owned Subsidiary, ZA One (Pty) Ltd. Pursuant to 11 U.S.C. §§ 105 and 363, and Fed. R. Bankr. P. 6004* [Docket No. 220] (the “Payment Order”), approving two transfers of funds by the Debtor to ZA One; (i) an immediate transfer of \$50,000.00; and (ii) an additional transfer of \$140,000.00 on November 25, 2014, unless a formal objection is filed by the Committee by 4:00 p.m. Mountain Time on November 24, 2014.

6. On November 4, 2014, the Court entered its *Order Granting Debtor's Motion for Order (A) Authorizing Bidding Procedures and Auction, (B) Authorizing Debtor to Provide Bid Protections to Stalking Horse, (C) Scheduling Sale Hearing and Approving Notice Thereof, and (D) Granting Related Relief* [Docket No. 228] (the "Bidding Procedures Order").

7. In accordance with the Bidding Procedures Order, the Debtor has entered into two agreements, the "US Asset Purchase Agreement" and the "ZA One Agreement" with Truworths Limited (the "Stalking Horse") [Docket No. 259] for the sale of the Assets (as defined in the Bidding Procedures Order and Exhibit A thereto). The proposed agreements provide for total payment of \$2.7 million dollars.

8. As a condition to closing the ZA One Agreement, the Debtor is required by December 31, 2014, to increase the amount of the second approved cash transfer from \$140,000.00 to \$305,000.00 in the form of an unsecured, subordinated intercompany loan or an equity contribution to ensure the preservation of ZA One's value during the sale and closing process.¹

9. This increase in the amount of the second approved cash infusion is an essential part of the ZA One Agreement and the related US Asset Purchase Agreement, and is therefore necessary for the sale of the Debtor's assets for the benefit of creditors and the estate.

RELIEF REQUESTED

10. By this Motion, the Debtor seeks entry of a supplemental Order authorizing it, in its business judgment, to increase the amount of the second authorized transfer from \$140,000.00

¹ See Docket No. 259, ZA One Agreement ¶ 3.1.2.8.1.

to \$305,000.00 in accordance with the terms of the ZA One Agreement and the previous Orders entered by the Court.

CONCLUSION

WHEREFORE, pursuant to 11 U.S.C. §§ 105(a) and 363, and in accordance with the ZA One Agreement and Orders previously entered by the Court, the Debtor respectfully requests the entry of an Order authorizing the Debtor to increase the amount of the second authorized payment as described above pursuant to the procedures described above to its wholly owned subsidiary, ZA One. The Debtor also requests such other relief as is just and proper.

DATED this 21st day of November, 2014.

DORSEY & WHITNEY LLP

/s/ Annette W. Jarvis
Annette W. Jarvis
Peggy Hunt
Michael F. Thomson
Jeffrey M. Armington
*Attorneys for Debtor Naartjie Custom Kids,
Inc.*